



Revision Number:

Purchasing Agent: GLENDON MITCHELL

**Item: COMPUTERS-UNIX SERVERS, WORKSTATIONS, DESKTOP
APPLIANCES, AND SOFTWARE (SUN)**

Vendor: 94859A Forsythe Solutions Group
201 South Main Street, Suite 900
Salt Lake City, Utah 84111

Internet Homepage: www.forsythetech.com

Telephone: (801) 582-0925

Fax number: (801) 350-9120

Contact: Ryan Layton

Email address: ryan@forsythetech.com

Brand/trade name: Sun Microsystems

Price: SEE DISCOUNTS ATTACHED; CONTACT VENDOR FOR PRICES

Terms: NET30

Effective dates: 09/16/02 through 09/15/03

Days required for delivery: 10 BUSINESS DAYS

Price guarantee period: 1 YEAR

Minimum order: \$500.00

Min shipment without charges: NONE, FOB ORIGIN

Other conditions: VERBAL ORDERS ARE NOT ACCEPTED

Renewal Options: Four (4) Additional one-year options to renew after 09/15/03

NOTE: NEW CONTRACT

Contract users who are contemplating first-time purchases of Unix servers should review and compare the following price agreement before finalizing a server purchase:

MA1590	Coda Technologies (SUN)
MA1591	Forsythe (HP)
MA1592	Forsythe (IBM)

This contract covers only those items listed in the price schedule. It is the responsibility of the agency to ensure that other items purchased are invoiced separately. State agencies will place orders directly with the vendor (creating a PG in Finet) and make payments for the same on a PV referencing the original PG. Agencies will return to the vendor any invoice which reflects incorrect pricing.



REPORTS: The contractor will submit quarterly reports to the state purchasing agent showing quantities and dollar volume of purchases by each state agency and political subdivision. These reports will be due 10 days after the calendar quarter.

CONTACT PERSONNEL INFORMATION:

Sun Account Executive

Tim Aguilar

Sun Microsystems

5575 Tech Center Drive

Suite 200

Colorado Springs, CO 80919

Phone: 719-277-6937

Fax: 719-277-6944

E-mail: tim.aguilar@sun.com

DISCOUNTS: The contract discounts are viewed as the minimum discount allowed through this contract. The vendor may offer additional discounts either as detailed in SPECIAL PRICING or at the vendors' discretion. Additional discounts may be available in an open competition environment among the awarded manufacturers. Contact the sales rep for details.

SPECIAL PRICING: The contractor agrees to pass on to users all special pricing including, but not limited to: promotional discounts, volume discounts, special purchase incentives, etc.

PERIPHERAL SERVER HARDWARE PRODUCTS: Disk arrays, network cards, memory, etc. are covered by this contract unless specifically excluded by the vendor.

DELIVERY TIME: Average delivery time will be 10 business days or less on stock items. Additional time may be required for special configurations.

SHIPPING: All orders will be shipped FOB Origin and freight charges are the responsibility of the ordering entity. The State reserves the right to audit any and all freight billings added to vendor invoices to confirm that freight charges are cost recovery billings only.

MANUALS: Contract prices include all manuals.

PROFESSIONAL SERVICES: The contract hourly rate covers post implementation professional services that may be required by the user. Pre-sales services are not allowed as a billable through this contract.

MAINTENANCE: Users will receive a 30% maintenance discount by referencing Statewide contract PA434 on the purchase order at the time the hardware is ordered. Users may also issue a separate purchase order for maintenance only and reference contract PA434.



ON LINE ORDERING: Go!Forsythe eProcurement Tool: Go!Forsythe is a secure web-based e-procurement application that allows customers to request quotes, place orders, and track IT equipment from all leading hardware and software manufacturers. Each state, county, and city government entity can have access to State contract pricing via Go!Forsythe at www.goforsythe.com. A customized set up is required (minimal effort) for use within each agency and must be initiated and/or approved by the department director. Please contact Ryan Layton to initiate setup process.

PRICING

DESCRIPTION

DISCOUNTS OFF LIST PRICE

HARDWARE & SOFTWARE

NOT LESS THAN

CATEGORY A ENTERPRISE SERVERS

32%

CATEGORY B SOFTWARE & LICENSES

24%

CATEGORY H WORKSTATION, WORKGROUP SERVERS

18%

CATEGORY P STORAGE SE SERIES

32%

PROFESSIONAL SERVICE

\$110.00/HR FOR BASE UNIX ENGINEER

MAINTENANCE (SERVICE OFFERINGS)

30%

(Reference contract PA434 on purchase order)

PROBLEM ESCALATION / INFORMATION REQUEST POLICY

To ensure the highest levels of customer service, Forsythe has an established problem escalation / information request methodology made up of Account Managers, Product Specialist Teams, Sales Coordinators, and Product Logistic Coordinators. Each member or group is highly trained in his/her respective specialty. The account manager is typical the first point of contact, however, each group member is available to the customer and will ultimately fulfill certain responsibilities in the transaction process. Additionally, Forsythe's information flow is deposited in a single application called "OrderPro" wherein each member is able to access quotations, proposals, purchasing, invoicing, RMA's, and contract information, among other things. Each Forsythe team member has quick access to any and all customer information from broad account detail to specific transaction detail. Additionally, customers have access to this information via Forsythe's online eProcurement portal called Go!Forsythe. Forsythe resources are as follows:

Local Account Manager: A single point of contact for all activity within the account. Account Manager is a customer liaison to Forsythe's pre and post sale resources. Responsible for identifying needs and addressing all concerns/issues within an account and is ultimately responsible for effectively executing problem escalation policy.

Ryan Layton	Account Manager	801-582-0925	ryan@forsythetech.com
Blake Hawkes	District Sales Mgr.	801-582-0925	bhawkesk@forsythetech.com
Bryant Martin	Regional Mgr.	303-762-7660	bmartin@forsythetech.com

Product Specialist Teams : A vendor focused, technical group dedicated to pre-sales support and configuration. Product specialist teams exist for each major vendor partner represented by Forsythe. Team members hold up-to-date certifications for their respective vendor class and are privy to solution configuration and vendor programs. Please feel free to contact Product Specialists directly or via the account manager.

David Costello IBM Server Mgr. 847-763-7417 dcostello@forsythetech.com



Jerry Cavanagh
Paul Zajdel

HP Servers Mgr. 847-982-2868
Sun Servers Mgr. 847-763-7460

jcavanagh@forsythetech.com
pzajdel@forsythetech.com

Sales Coordinators: Dedicated to assisting Account Managers in Sales Contract preparation, proposal generation, PO placement, etc. Use as a secondary contact to the account manager.

Frankie Pitcher
Liz Kim

Sales Coordinator 303-762-7658
Coordinator Mgr. 847-982-6480

fpitcher@forsythetech.com
ekim@forsythetech.com

Product Logistic Coordinators: Dedicated to post-sales customer service. Responsibilities include: providing customers with order status updates, shipment expediting, scheduling and coordinating of vendor installations, RMA and DOA vendor coordination, etc.

Jay Garbanzos

Logistic Mgr.

847-763-2341

jgarbanzos@forsythetech.com

Go!Forsythe eProcurement Tool: Go!Forsythe is a secure web-based e-procurement application that allows customers to request quotes, place orders, and track IT equipment from all leading hardware and software manufacturers. Each state, county, and city government entity can have access to State contract pricing via Go!Forsythe at www.goforsythe.com. A customized set up is required (minimal effort) for use within each agency and must be initiated and/or approved by the department director. Please contact Ryan Layton to initiate setup process.

FINET COMMODITY CODE(S):

20493000000 - TERMINALS AND CRTS: DATA PROCESSING SYSTEMS (MICROCOMPUTERS)

20693000000 - TERMINALS AND CRTS: DATA PROCESSING SYSTEMS (MINI & MAINFRAME)

90634000000 - FREIGHT HANDLING; MATERIALS HANDLING

20991000000-UTILITIES; OPERATING SYSTEM, ETC.



**Revised Contract Terms and Conditions
State of Utah, Statewide Contracts
ATTACHMENT A (Invitation for Bids)**

- 1. AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.
- 2. CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
- 3. LAWS AND REGULATIONS:** Any and all supplies, services and equipment proposed and furnished will comply fully with all applicable Federal and State laws and regulations.
- 4. RECORDS ADMINISTRATION:** The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records will be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.
- 5. AUDIT OF RECORDS:** The Contractor agrees to allow the State and Federal auditors, and State agency staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
- 6. CONFLICT OF INTEREST:** Contractor certifies that it has not offered or given any gift or compensation prohibited by the laws of the state of Utah to any officer or employee of the state or participating political subdivisions to secure favorable treatment with respect to being awarded this contract.
- 7. INDEPENDENT CONTRACTOR:** Contractor will be an independent Contractor, and as such will have no authorization, express or implied to bind the State to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as expressly set forth herein. Compensation stated herein will be the total amount payable to the Contractor by the State. The Contractor will be responsible for the payment of all income tax and social security tax due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State will not be deemed to be employees or agents of the Contractor.
- 8. HOLD HARMLESS:** The Contractor will release, protect, indemnify and hold the State and the respective political subdivisions and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the Contractor, his employees or subcontractors or volunteers.
- 9. EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
- 10. SEVERABILITY:** If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.
- 11. AMENDMENTS:** The terms of this contract will not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State Director of Purchasing.



12. DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE.

13. CANCELLATION: Unless otherwise stated in the special terms and conditions, any contract entered into as a result of this bid may be canceled without cause by the State upon 60 days notice, in writing, prior to the effective date of the cancellation. Cancellation may be in whole or in part. Cancellation of the contract due to Contractor default may be immediate.

14. TAXES: Bid prices will be exclusive of state sales, use and federal excise taxes. The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract, or contract orders. The State of Utah's Federal excise exemption number is 87-780019K

15. WARRANTY: The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the Contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The Contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. PARTICIPANTS: This is a contract to provide the State of Utah government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) with the goods and/or services described in the bid.

17. POLITICAL SUBDIVISION PARTICIPATION: Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) will be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

18. QUANTITY ESTIMATES: The State does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for bidding purposes only and are not to be construed as a guarantee to purchase any amount.

19. DELIVERY: The prices bid will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered will be shipped without charge.

20. REPORTS: The Contractor will submit quarterly reports to the State Purchasing Agent showing the quantities and dollar volume of purchases by each agency and political subdivision.

21. PROMPT PAYMENT DISCOUNT: Offeror may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.



22. FIRM BID PRICES: Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of bid opening.

23. PRICE GUARANTEE, ADJUSTMENTS: The contract pricing resulting from this bid will be guaranteed for the period specified. Following the guarantee period, any request for price adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the effective date. Requests for price adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the contract will not be effective unless approved by the State Director of Purchasing. The State will be given the immediate benefit of any decrease in the market, or allowable discount.

24. ORDERING AND INVOICING: Orders will be placed by the using agencies directly with the Contractor. All orders will be shipped promptly in accordance with the delivery guarantee. The Contractor will then promptly submit invoices to the ordering agency. The state contract number and the agency ordering number will appear on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices on file with the Division of Purchasing. The State has the right to adjust any invoice reflecting incorrect pricing.

25. PAYMENT: Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments may be made via a State of Utah (or political subdivision) APurchasing Card.® All payments to the Contractor will be remitted by mail unless paid by Purchasing Card.

26. MODIFICATION OR WITHDRAWAL OF BIDS: Bids may be modified or withdrawn prior to the time set for the opening of bids. After the time set for the opening of bids no bid may be modified or withdrawn.

27. BID PREPARATION COSTS: The State is not liable for any costs incurred by the bidder in bid preparation.

28. INSPECTIONS: Goods furnished under this contract will be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or not in compliance with bid specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph will adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

29. PATENTS, COPYRIGHTS, ETC.: The Contractor will release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.

30. ASSIGNMENT/SUBCONTRACT: Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State Director of Purchasing.

31. DEFAULT AND REMEDIES: Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages; 4. Suspend Contractor from receiving future bid solicitations.

32. FORCE MAJEURE: Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contact after determining such delay or default will reasonably prevent successful performance of the contract.

33. HAZARDOUS CHEMICAL INFORMATION: The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.



34. NON-COLLUSION: By signing the bid the bidder certifies that the bid submitted has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition.

35. PUBLIC INFORMATION: Contractor agrees that the contract will be a public document, as far as distribution of copies, and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.

36. CONFLICT OF TERMS: In the event of any conflict between these standard terms and conditions and any special terms and conditions which follow, the special terms and conditions will govern.

37. LOCAL WAREHOUSE AND DISTRIBUTION: The Contractor will maintain a reasonable amount of stock warehoused in the state of Utah for immediate or emergency shipments. Shipments are to be made in the quantities as required by the various ordering agencies. Orders for less than the minimum specified amount will have transportation charges prepaid by the Contractor and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered will be shipped without charge.

Revision date: 9/16/2002

The following contract terms have been modified for this contract.

In Section 7, on page three, Warranty, All the UCC implied warranties are expressly included into the contract between the Bidder and the State of Utah. Unless specifically agreed to, all disclaimers of such warranties by the bidder shall have no effect. In addition, the bidder is bound as express warranties all the statements enumerated in subsections (1) through (7). In addition, there is no limitation of liability nor a limit on the types of remedies allowed, such as consequential or special damages. The FSG takes issue with this since it is a Reseller and not a Manufacturer. The manufacturer's warranty is all that FSG is able to warrant to the State of Utah. Also, the standard FSG would expressly disclaim all express types of consequential types of damages for both product and services. With respect to any Services provided under the contract, FSG can say that all services will be provided in a professional and workmanlike manner consistent with industry practices, and shall meet any specifications in any statement of work.

In Section 2, of the Standard Contract Terms and Conditions, jurisdiction and choice of law are to be in Utah. Choice of Law is acceptable, jurisdiction would ideally be silent.

In Section 8, of the Standard Contract Terms and Conditions, FSG indemnifies the State of Utah to an unlimited amount. FSG needs an absolute cap to indemnification liability or any liability hereunder of \$2,000,000 per occurrence. This requirement is imposed on FSG by its insurance.

In Section 13, of the Standard Contract Terms and Conditions, Any order for servers can be cancelled upon 60 days notice to FSG. FSG should have the right to recoup its out of pocket expenses in those instances.

In Section 15, of the Standard Contract Terms and Conditions, all the UCC implied warranties are expressly included into the contract between the Bidder and the State of Utah. Unless specifically agreed to, all disclaimers of such warranties by the bidder shall have no effect. In addition, the bidder is bound as express warranties all the statements enumerated in subsections (1) through (7). In addition, there is no limitation of liability nor a limit on the types of remedies allowed, such as consequential or special damages. The FSG takes issue with this since it is a Reseller and not a Manufacturer. The manufacturer's warranty is all that FSG is able to warrant to the State of Utah. Also, the standard FSG would expressly disclaim all express types of consequential types of damages for both product and services. With respect to any Services provided under the contract, FSG can say that all services will be provided in a professional and workmanlike manner consistent with industry practices, and shall meet any specifications in any statement of work.

In Section 29, of the Standard Contract Terms and Conditions, FSG should pass through the manufacturer's intellectual property indemnification and no more. There needs to be a cap of indemnification liability or any liability hereunder of \$2,000,000 per occurrence in regards to services. Typical services provided by FSG are hardware configurations which typical do not lend to intellectual property infringements or protections. This requirement is imposed on FSG by its insurance.

